

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

RICKEY W. SMITH

§

v.

§

CIVIL ACTION NO. 5:24cv3-RWS-JBB

DIRECTOR, TDCJ-CID

§

ORDER

Before the Court is Petitioner Rickey Smith's application for the writ of habeas corpus under 28 U.S.C. § 2254 challenging the legality of his confinement. Docket No. 6. The case was referred to United States Magistrate Judge Boone Baxter in accordance with 28 U.S.C. § 636.

On August 30, 2024, the Magistrate Judge issued a Report recommending dismissal of the petition without prejudice for failure to exhaust state remedies. Docket No. 12. The Magistrate Judge further recommended that a certificate of appealability be denied *sua sponte*, with such denial referring solely to an appeal of the decision in this case and having no effect upon Petitioner's right to seek relief in state court through any proper means, or to again seek relief in federal court in the event that the state courts do not grant him the relief he seeks.

A copy of the Report and Recommendation was sent to Petitioner at his last known address, return receipt requested, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21 (5th Cir. 2019).

Because no objections have been received, Petitioner is barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions and recommendations and,


except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203- RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 12) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-captioned petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state remedies. A certificate of appealability is denied *sua sponte*, with such denial referring solely to an appeal of the decision in this case and having no effect upon Petitioner's right to seek relief in state court through any proper means, or to again seek relief in federal court in the event that the state courts do not grant him the relief he seeks.

So ORDERED and SIGNED this 1st day of October, 2024.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE